

STATE OF MICHIGAN
COURT OF APPEALS

In re D. M. RAINEY, Minor.

UNPUBLISHED

April 23, 2015

No. 323783

Kent Circuit Court

Family Division

LC No. 14-050846-NA

Before: METER, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her rights to a minor child under MCL 712A.19b(3)(g) (failure to provide proper care or custody and no reasonable expectation of providing proper care and custody within a reasonable time). We affirm.

Respondent argues that the trial court erred when it admitted the child's hearsay statements under MCR 3.972(C)(2) because, according to respondent, there were not adequate indicia of trustworthiness with respect to the statements. "We review for an abuse of discretion a trial court's decision regarding the admission of evidence." *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008).

"[H]earsay statements of children pertaining to acts of child abuse are admissible at the [adjudication] trial if the criteria for reliability set out in MCR 3.972(C)(2) . . . are satisfied." *In re Archer*, 277 Mich App 71, 80; 744 NW2d 1 (2007). MCR 3.972(C)(2) provides, in relevant part:

Any statement made by a child under 10 years of age or an incapacitated individual under 18 years of age with a developmental disability as defined in MCL 330.1100a(21) regarding an act of child abuse, child neglect, sexual abuse, or sexual exploitation, as defined in MCL 722.622(f), (j), (w), or (x), performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement as provided in this subrule.

(a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, *that the circumstances surrounding the giving of the statement provide adequate indicia of*

trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony. [Emphasis added.]

"Circumstances indicating the reliability of a hearsay statement may include spontaneity, consistent repetition, the mental state of the declarant, use of terminology unexpected of a child of a similar age, and lack of motive to fabricate." *Archer*, 277 Mich App at 82. "The reliability of a statement depends on the totality of the circumstances surrounding the making of the statement." *Id.*

Here, regarding the child's statements that there was an incident when respondent kicked the child's face, the child's sister told Lori Preston, a Child Protective Services worker,¹ that respondent's kick caused a mark on his face, thus corroborating the child's account. Regarding the child's statements that there was an incident when respondent chased him with a knife, the child's therapist testified that he arrived at respondent's home at the time of the incident and was greeted by respondent uttering four or five times that she was "going to f----- kill" the child while holding a knife in the air above her head. The witness testified that as he entered the home, he saw that the child appeared frightened and was under a coffee table. Thus, the child's statements concerning the incident with a knife were also corroborated.

Further, Preston, who interviewed the child on two occasions, testified that she used the forensic interview protocol when she interviewed the child and the child demonstrated that he knew the difference between the truth and a lie. Preston said that the child did not display behaviors during the interviews that would cause her concern about the child's honesty and that she was unable to ascertain any motive for the child to lie. The child's therapist also testified that the child did not exhibit behaviors that would cause him concern about the child's truthfulness. Additionally, there was testimony that showed the spontaneity of the child's statements and that aspects of the statements were repeated. The totality of the circumstances indicate that the criteria for reliability were satisfied in this case. The trial court did not abuse its discretion in admitting the child's statements under MCR 3.972(C)(2). *Utrera*, 281 Mich App at 15.

Respondent also argues that petitioner failed to provide her with reasonable efforts to reunify her with the minor child. Petitioner's failure to make reasonable efforts to avoid the termination of parental rights in the form of providing a parent services can sometimes prevent the establishment of statutory grounds for termination. *In re Newman*, 189 Mich App 61, 67-69; 472 NW2d 38 (1991).

We note, first, that petitioner requested termination in the initial petition. See *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). At any rate, respondent was indeed offered extensive services in this case, but she failed to participate in most of them, and she made no progress regarding several of the barriers to reunification. In *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012), we explained that "[w]hile the DHS has a responsibility to expend

¹ No objection was lodged against the testimony from Preston in which she relayed this information from the sister.

reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” Additionally, a parent’s mere participation in and benefit from services is insufficient; rather, a parent must demonstrate sufficient compliance with and benefit from services to address the problem targeted by those services. *Id.* Contrary to respondent’s argument, there was testimony that indicated that respondent was provided with a service plan, that she was advised of the consequences of not following the plan, and that any lack of communication regarding the plan was the result of respondent’s actions. Thus, the trial court did not clearly err in finding that petitioner provided respondent with reasonable efforts to reunify her with the child. See, generally, *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

Respondent also argues that the trial court erred in finding a ground for termination under MCL 712A.19b(3)(g) and in finding that termination was in the child’s best interests. To terminate parental rights, a trial court must find that a statutory ground for termination under MCL 712A.19b has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). After a trial court has properly found a statutory ground for termination, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination of parental rights is in the child’s best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). A trial court’s factual findings in terminating parental rights, including a finding that a ground for termination has been established and a finding that termination is in a child’s best interests, are reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The facts demonstrated that respondent failed to provide proper care or custody for the child because of her inability to appropriately control the child and her history of refusing to participate in services that could help her control the child. A trial court may rely on a respondent’s history of failing to provide care and custody and an unwillingness to address problems in finding that there is no reasonable expectation that the respondent would be able to provide proper care and custody within a reasonable time. *Archer*, 277 Mich App at 75-76. The trial court’s finding that a ground for termination under MCL 712A.19b(3)(g) existed in this case had significant support in the record and was not clearly erroneous.

“In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). A trial court may also consider a parent’s history. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

Respondent is correct that there was a strong bond between her and the child and that their bond weighed against termination. However, while the bond between respondent and the child weighed against termination, the remainder of the trial court’s findings, including its finding that the child needed permanence and its emphasis on respondent’s history and her unwillingness to receive help, were supported by the record and weighed in favor of termination. The trial court may determine the best interests of the child using evidence from the whole record. *Trejo Minors*, 462 Mich at 353. The trial court’s best-interests finding was not clearly erroneous.

Affirmed.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Mark T. Boonstra